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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

DANIEL ANGELO ZOLEZZI,)	No. 02-56681
)	
Petitioner,)	D.C. No. CV-01-01453-TJW
)	
v.)	MEMORANDUM*
)	
ERNIE ROE, Warden,)	
)	
Respondent.)	
_____)	

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Argued and Submitted November 6, 2003
Pasadena, California

Before: PREGERSON, FERNANDEZ, and BERZON, Circuit Judges.

David Zolezzi appeals the district court's denial of his petition for habeas corpus. We affirm.

Zolezzi's argument revolves around his claim that the admission of irrelevant prior bad acts evidence violated due process pursuant to "clearly established

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Federal law, as determined by the Supreme Court.” 28 U.S.C. § 2254(d)(1). That proposition is problematic. See Garceau v. Woodford, 275 F.3d 769, 774-75 (9th Cir. 2001), reversed on other grounds, 538 U.S. 202, ___, 123 S. Ct. 1398, 1403, 155 L. Ed. 2d 363 (2003); McKinney v. Rees, 993 F.2d 1378, 1384 (9th Cir. 1993); see also Estelle v. McGuire, 502 U.S. 62, 70, 112 S. Ct. 475, 481, 116 L. Ed. 2d 385 (1991). However, we need not decide it.

We cannot say that the state courts erred when they decided that the admission of the evidence was not prejudicial. Certainly, on the record of this case, we cannot say that it had a “substantial and injurious effect or influence” on the jury’s verdict. Brecht v. Abrahamson, 507 U.S. 619, 638, 113 S. Ct. 1710, 1722, 123 L. Ed. 2d 353 (1993) (internal quotation marks omitted). Nor can we say that we are in grave doubt on that subject. See O’Neal v. McAninch, 513 U.S. 432, 436, 115 S. Ct. 992, 994, 130 L. Ed. 2d 947 (1995).

Thus, the district court did not err when it refused to issue the writ of habeas corpus.

AFFIRMED.